IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Con.Case(C).No. 183 of 2007(S)

AGAINST THE JUDGEMENT IN OP.14840/1999 Dated 11/11/2003
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PETITIONER/PETITIONER IN W.P.(C)

K.M.KUNJU KANI, AGED 58 YEARS,
S/O.LATE MOIDEEN RAWTHER, KANDAMKULATHU,
KARINILAM P.O., PULIKKUNNU,
VIA.MUNDAKKAYAM, KOTTAYAM DISTRICT.

BY ADV. SRI.P.K.IBRAHIM

RESPONDENTS/2ND RESPONDENT IN W.P.(C):
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1. DR.AMMINI, (IN CHARGE OF DMO),
(AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER
OFFICE OF THE DISTRICT MEDICAL OFFICE,
PAINAVU, IDUKKI.

2. DR.ANIL KUMAR,
(AGE AND FATHER'S NAME NOT KNOWN TO THE
PETITIONER), DISTRICT MEDICAL OFFICER,
PAINAVU, IDUKKI.

BY SR.GOVERNMENT PLEADER SMT.MEERA

THIS CONTEMPT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

Cont.Case (C) No.183 of 2007

Dated, this the 5th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

Alleging that the respondents have wilfully and deliberately disobeyed the orders passed by this Court in O.P.No.14840 of 1999 dated 11th November, 2003, the complainant is before us in this contempt petition filed under Sections 11 and 12 of the Contempt of Courts Act read with Article 215 of the Constitution, inter alia, requesting us to take appropriate proceedings against the respondents.

2. This Court while disposing of O.P.No.14840 of 1999 was pleased to pass the following order. The said order reads as under:

> "6. It is submitted that the petitioner has retired from service on 30.4.2002. As already noted above there is no enquiry as per the rules inspite of the observations made by this court in Ext.P7 judgment. Now that the petitioner has already retired from service, there is no point in conducting the enquiry also. Therefore, I set aside the impugned orders. It is declared that the petitioner shall be deemed to have duly retired from service and the pensionary benefits shall be settled accordingly. Appropriate action in accordance with law for settling the pensionary benefits shall be taken within a period of three months from the date of production of a copy of this judgment by the petitioner. In the event of delay, petitioner will be entitled to get interest at the rate of 12% from 1.5.2003 and the officers responsible for the delay shall be personally liable for the interest."

3. While entertaining this contempt petition filed by the complainant, this Court had issued notice to the respondents. They have entered appearance through learned Government Pleader. They have also filed an affidavit before this Court. In paragraph 3 of the affidavit they have stated as under:

> "3. It is submitted that in compliance of the direction of this Hon'ble Court, this respondent has already disbursed all the pensionary benefits due to the petitioner. It is submitted that the pension amount was disbursed to the petitioner on 8.6.2004 and the DCRG, commutted value etc. were paid to the petitioner on 25.6.2004. As per the G.O.(Rt.) No.866/05/H&FWD dated 23.3.2005, the interest amount of Rs.13,655/- for the delayed payment of pensionary benefits to the petitioner has been granted. A true copy of the above Government Order is produced herewith and marked as Annexure R2(a). The disbursement of the interest amount of Rs.13,655/- as per the Annexure R2(a) has been duly communicated to the petitioner vide registered letter dated 30.4.2005. True copy of the above letter sent to the petitioner is produced herewith and marked as Annexure R2(b). The details regarding the interest for the delayed payment is as follows:
>
> | | |
> |---|---|
> | (1) Interest for pension @ 12% for 13 months from 1.5.2003 to 30.5.2004 | Rs.4,516.00 |
> | (2) Interest for DCRG of Rs.21390/- | Rs.2,781.00 |
> | (3) Interest for commutation value of Rs.48909/- | Rs.6,358.00 |
> | Total | Rs.13,655.00 |
>
> ========== "

Along with their affidavit they have also enclosed a copy of the order passed by the Principal Secretary to Government dated 23.3.2005.

4. At the time of hearing of this contempt petition, the learned Government Pleader has also produced before us the order passed by the District Medical Officer (H), Idukki dated 28.6.2007. In that it is stated as under:

> "The Hon'ble High Court of Kerala as per the judgment dated 11.11.2003 in OP No.14840 of 1999 as confirmed by the division Bench in the judgment dated 10.02.2005 in W.A.No.193 of 2005 had declared that since you retired from service there is no point in conducting enquiry. The Hon'ble High Court had further declared that you shall be deemed to have duly retired from service and that your pensionary benefits shall be settled accordingly.
>
> The letter referred 1 above is seen issued to you without taking note of the said judgments. And you have initiated contempt of Court Proceedings referred to 2 above, which is pending. In such circumstances, the said letter No.A5-4112/06 dated 10.10.2006 issued to you is hereby recalled and it is ordered as follows:

1. All further proceedings in pursuance to the letter No.A5.4112/06 dated 10.10.2006 initiated by this office are hereby dropped.

2. You are not entitled to any further service benefits on your retirement.

3. This letter is issued without prejudice to the proceedings by the vigilance and Anti Corruption bureau pending against you."

5. After hearing Mr.P.K.Ibrahim, learned counsel appearing for the petitioner and after going through the pleadings of the parties and the communication issued by the respondent to the petitioner, we are of the opinion that the respondents have not either wilfully or deliberately disobeyed the orders and directions issued by this Court. Therefore, we are not prepared to take cognizance of this contempt petition. Accordingly, the proceedings are dropped. However, liberty is reserved to the petitioner, if he so desires, to question the correctness or otherwise of the order passed by the Government dated 23.3.2005 and the order dated 28.6.2007 issued by the respondent.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns